

CCRB INVESTIGATIVE RECOMMENDATION

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|--|--|---------------------------|--|---|--|
| Investigator: Patrick Yu | Team: Squad #8 | CCRB Case #: 201905840 | <input checked="" type="checkbox"/> Force | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input checked="" type="checkbox"/> Injury |
| Incident Date(s) Thursday, 07/04/2019 11:23 PM, Friday, 07/05/2019 4:00 AM | Location of Incident: 325 East 143rd Street; PSA 7 stationhouse | Precinct: 40 | 18 Mo. SOL 1/4/2021 | EO SOL 8/21/2021 | |
| Date/Time CV Reported Fri, 07/05/2019 11:43 AM | CV Reported At: CCRB | How CV Reported: Phone | Date/Time Received at CCRB Fri, 07/05/2019 11:43 AM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |
| | | |

| Witness(es) | Home Address |
|-------------|--------------|
| | |
| | |

| Subject Officer(s) | Shield | TaxID | Command |
|------------------------|--------|--------|---------|
| 1. POM Nivez Hernandez | 19129 | 958693 | PSA 7 |
| 2. An officer | | | |
| 3. SGT Wilmer Marquez | 03687 | 954099 | PSA 7 |
| 4. POM Brian Greaige | 13811 | 960616 | PSA 7 |
| 5. Officers | | | |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|-------------------------------|-----------|--------|----------|
| 1. POM Cristopher Dominguez | 23809 | 962974 | PSA 7 |
| 2. POM Matthew Barlow | 26881 | 964910 | 040 PCT |
| 3. SGT Dawin Vanderpool | 03324 | 955617 | 040 PCT |
| 4. POM Steven Moran | 04466 | 964667 | PSA 7 |
| 5. POM Nestor Amarantepolanco | 16064 | 964221 | PSA 7 |

| Officer(s) | Allegation | Investigator Recommendation |
|-----------------------|--|-----------------------------|
| A.POM Nivez Hernandez | Force: On July 4, 2019, at 325 East 143rd Street in the Bronx, Police Officer Nivez Hernandez used physical force against § 87(2)(b) | |
| B.POM Brian Greaige | Force: On July 4, 2019, at 325 East 143rd Street in the Bronx, Police Officer Brian Greaige used physical force against § 87(2)(b) | |
| C.POM Brian Greaige | Force: On July 4, 2019, at 325 East 143rd Street in the Bronx, Police Officer Brian Greaige used physical force against § 87(2)(b) | |
| D.POM Brian Greaige | Force: On July 4, 2019, at 325 East 143rd Street in the Bronx, Police Officer Brian Greaige used physical force against § 87(2)(b) | |
| E. Officers | Force: Officers used physical force against § 87(2)(b) | |
| F. Officers | Force: On July 4, 2019, at 325 East 143rd Street in the Bronx, an officer spoke discourteously to an individual. | |

| Officer(s) | Allegation | Investigator Recommendation |
|----------------------|--|-----------------------------|
| G. An officer | Discourtesy: An officer spoke discourteously to § 87(2)(b) | |
| H.SGT Wilmer Marquez | Abuse: On July 5, 2019, at the PSA 7 stationhouse, Sergeant Wilmer Marquez did not process § 87(2)(b)s complaint regarding officers. | |

Case Summary

On July 5, 2019, § 87(2)(b) § 87(2)(b) filed this complaint with the CCRB via phone.

On July 4, 2019, at approximately 11:23 p.m., officers from PSA 7 and the 40th Precinct responded to 325 East 143rd Street in the Bronx regarding a large crowd. At the location, as the officers arrested § 87(2)(b) § 87(2)(b)'s son, § 87(2)(b) PO Nivez Hernandez of PSA 7 pushed § 87(2)(b) (Allegation A: Force, § 87(2)(g)) PO Brian Greaige of PSA 7 then approached and pushed § 87(2)(b) § 87(2)(b) (Allegation B: Force, § 87(2)(g)). As PO Greaige attempted to place § 87(2)(b) under arrest, PO Greaige allegedly punched § 87(2)(b) twice (Allegation C: Force, § 87(2)(g)). PO Greaige and officers subsequently took § 87(2)(b) down to the ground (Allegation D: Force, § 87(2)(g)) Allegation E: Force, § 87(2)(g)). While on the ground, officers then allegedly punched and kicked § 87(2)(b) (Allegation F: Force, § 87(2)(g)). An officer subsequently told § 87(2)(b) “Crying like a little girl, give us your hands” and when § 87(2)(b) told the officers that he had to go to work the next day, an officer responded, “Too fucking bad” (Allegation G: Discourtesy, § 87(2)(g)).

On July 5, 2019, at approximately 4:00 a.m., § 87(2)(b) entered the 41st Precinct stationhouse and attempted to file a complaint against police officers. Sgt. Wilmer Marquez of the 41st Precinct refused to process § 87(2)(b)'s complaint at the stationhouse (Allegation H: Abuse of Authority, § 87(2)(g)).

The investigation obtained 35 BWC videos from the NYPD (Board Review 10-44). The investigation also obtained surveillance video footage from NYCHA and the PSA 7 stationhouse (Board Review 08-09).

Findings and Recommendations

Allegation (A) Force: On July 4, 2019, at 325 East 143rd Street in the Bronx, Police Officer Nivez Hernandez used physical force against § 87(2)(b)

It is undisputed that officers arrested § 87(2)(b) in front of 325 East 143rd Street. NYCHA footage and BWC showed officers escorting § 87(2)(b) away from the location when § 87(2)(b) walked close to the officers and § 87(2)(b) was wearing a medical boot on her leg. Several officers surrounded § 87(2)(b) as they escorted him away from the location. At 8:22:43 of NYCHA footage, it appears that § 87(2)(b)'s arm makes physical contact with an officer's arm or with § 87(2)(b) as § 87(2)(b) was being escorted away (Board Review 08). PO Gellison Flores' BWC showed PO Hernandez moving § 87(2)(b) out of the path of the officers and § 87(2)(b) as they went down the stairs (Board Review 14). From PO Flores' footage, it appears that § 87(2)(b) falls down as the PO Hernandez moved her. NYCHA footage and BWC footage does not clearly capture what § 87(2)(b) was doing after she stood close to the officers and § 87(2)(b) or how PO Hernandez moved § 87(2)(b).

In her CCRB interview, § 87(2)(b) denied physically preventing the officers from placing § 87(2)(b) under arrest, placing her hands on the officers, or attacking officers (Board Review 01). § 87(2)(b) recalled an officer yelling, “Move,” as the officers started walking § 87(2)(b) away, but she did not know who the officer was talking to. § 87(2)(b) then felt a push to one of her shoulders before she fell on the ground, but she did not see who pushed her.

In his initial CCRB complaint, § 87(2)(b) stated that he saw officers push § 87(2)(b) causing her to fall (Board Review 02). However, § 87(2)(b) did not provide an additional statement to the CCRB (Board Review 47).

In his CCRB testimony, PO Hernandez stated that § 87(2)(b) prevented the officers from handcuffing § 87(2)(b) by holding his hand and getting in between the officers and § 87(2)(b) (Board Review 05). PO Hernandez told § 87(2)(b) to move back, but § 87(2)(b) continued to hold § 87(2)(b)'s hand. PO Hernandez then pushed her hand away once or twice with his hand. As a result, § 87(2)(b) released her grip of § 87(2)(b)'s hand, threw herself back, and then fell to the ground.

PO Hernandez prepared TRI report #§ 87(2)(b) noting that an officer inadvertently pushed § 87(2)(b) causing her to lose her balance and fall (Board Review 46). The ISAR prepared by Captain Jerome Bacchi noted that PO Hernandez guided § 87(2)(b) back and then she fell to the ground (Board Review 45).

It is undisputed that at the time the officers placed § 87(2)(b) in handcuffs, there were officers performing crowd control given that there were numerous civilians on the scene. The officers attempted to quickly escort § 87(2)(b) away when § 87(2)(b) interfered by coming close to the officers and making physical contact with either § 87(2)(b) or the officers. It is also undisputed that § 87(2)(b) refused verbal commands to move.

NYPD Patrol Guide Procedure 221-01 states that force may be used when it is reasonable to ensure the safety of a member of the service or otherwise protect life, or when it is reasonable to place person in custody or prevent escape from custody (Board Review 52).

§ 87(2)(g)

Allegation (B) Force: On July 4, 2019, at 325 East 143rd Street in the Bronx, Police Officer Brian Greige used physical force against § 87(2)(b)

At 1:21 of PO Dmitry Vaskovich's BWC, § 87(2)(b) tells PO Greige that he lived in the building and PO Greige said, "Then move. You're not in the building, right?" (Board Review 16) It is unclear what occurred prior to 1:21 in the BWC because the BWC did not capture their conversation and a civilian obstructed the view of them. § 87(2)(b)'s hands were somewhere around his torso area and § 87(2)(b) never walks closer towards PO Greige between 1:21 and 1:25. At 1:25, PO Greige pushes § 87(2)(b) and a civilian subsequently holds § 87(2)(b) back.

At 1:09, of PO Nestor Amaranteplanco's BWC, it appears that § 87(2)(b) is standing closely to an officer while speaking to him (Board Review 17). The conversation is not captured, but the officer does not appear to be looking at § 87(2)(b). At 1:10, PO Greige comes from behind § 87(2)(b) and pushes him forward, which was not depicted in PO Vaskovich's BWC. It is unclear what immediately happens between PO Greige and § 87(2)(b). Beginning at 1:17, it depicts a different angle of the same events as PO Vaskovich's BWC mentioned above. PO Amaranteplanco stands behind § 87(2)(b) while PO Greige tells § 87(2)(b) to move three times in succession. § 87(2)(b) says something inaudible and moves his hands in front of his body, but it is unclear what he is doing. PO Greige then pushes § 87(2)(b) and tells him to

get out of his face.

§ 87(2)(b) did not provide a statement to the CCRB regarding this (Board Review 02).

In his CCRB interview, PO Greaige reviewed PO Amaranteplanco's BWC beginning at 1:04 and stated that was when he arrived at the location and performed crowd control (Board Review 06). PO Greaige stated that § 87(2)(b) refused to leave, acted irate by jumping over the barriers in front of the building, and told them that he lived in the building. PO Greaige and possibly other officers told § 87(2)(b) that he had to leave and that he could not enter the building. PO Greaige subsequently nudged § 87(2)(b) by extending his arm with his palm facing out to guide him out of the area, but § 87(2)(b) did not listen.. § 87(2)(b)'s hands were close to PO Greaige's face and body and he was "talking aggressively". PO Greaige was uncomfortable and felt that § 87(2)(b) was a safety risk given his demeanor. PO Greaige created distance between § 87(2)(b) and himself because § 87(2)(b) was not complying, his hands were near the officers' body where they carried dangerous tools, and to get § 87(2)(b) and others out of the area.

In his CCRB statement, PO Amarantepolanco did not see what § 87(2)(b) was doing prior to PO Greaige attempting to place § 87(2)(b) in handcuffs, but he observed § 87(2)(b) and PO Greaige engaged in a conversation (Board Review 07). PO Amarantepolanco could not hear their conversation. PO Amarantepolanco did not recall if § 87(2)(b) was doing anything physical at this point and did not see § 87(2)(b) waving his hands around.

From their CCRB testimony, PO Moran and PO Hernandez did not witness the initial interaction between PO Greaige and § 87(2)(b) (Board Review 04 and 05). Sgt. Marquez did not recall if anyone was arrested at the location or seeing an officer push a male (Board Review 03).

NYPD Patrol Guide Procedure 221-01 states that force may be used when it is reasonable to ensure the safety of a member of the service or otherwise protect life, or when it is reasonable to place person in custody or prevent escape from custody (Board Review 52).

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

Allegation (C) Force: On July 4, 2019, at 325 East 143rd Street in the Bronx, Police Officer Brian Greaiqe used physical force against § 87(2)(b)

Allegation (D) Force: On July 4, 2019, at 325 East 143rd Street in the Bronx, Police Officer Brian Greaiqe used physical force against § 87(2)(b)

Allegation (E) Force: On July 4, 2019, at 325 East 143rd Street in the Bronx, officers used physical force against § 87(2)(b)

In his initial CCRB complaint, § 87(2)(b) stated that as he spoke with PO Greaiqe at the bottom of the ramp, PO Greaiqe subsequently punched him twice in the face (Board Review 02). § 87(2)(b) was uncooperative with providing a sworn statement to the CCRB.

§ 87(2)(b) did not witness the incident between § 87(2)(b) and the officers (Board Review 01).

In his CCRB statement, PO Greaiqe stated that after he pushed § 87(2)(b) he attempted to place § 87(2)(b) under arrest for disorderly conduct, OGA, and possibly inciting a riot because he was acting irate, interfering with the officers' duties, and causing a disturbance which caused other individuals to refuse police commands to disperse (Board Review 06). As PO Greaiqe attempted to place § 87(2)(b) in handcuffs by grabbing his arms and straightening them, § 87(2)(b) struggled, flailed his arms, and tensed his body. In response, PO Greaiqe and other officers guided § 87(2)(b) down to the ground to better control him. PO Greaiqe denied punching § 87(2)(b).

In his CCRB statement, PO Amarantepolanco stated that he stood approximately five feet away as PO Greaiqe attempted to handcuff § 87(2)(b) (Board Review 07). PO Amarantepolanco stated that when PO Greaiqe grabbed § 87(2)(b)'s arm, § 87(2)(b) used both hands to push PO Greaiqe off him. PO Amarantepolanco assisted by trying to grab § 87(2)(b)'s hand, but § 87(2)(b) pulled his hand away and broke free of his grasp. Officers then guided § 87(2)(b) to the ground. PO Amarantepolanco did not see the process of when officers brought § 87(2)(b) to the ground, but he saw § 87(2)(b) on the ground. PO Amarantepolanco denied seeing PO Greaiqe punch § 87(2)(b).

In their CCRB testimony, PO Moran and PO Hernandez stated that § 87(2)(b) was already on the ground when they first noticed him (Board Review 04 and 05). Sgt. Marquez did not recall if he used any force against civilians or if any officers did so and did not recall if any arrests were made (Board Review 03).

None of the officers interviewed identified additional officers who assisted PO Greaiqe in guiding § 87(2)(b) to the ground.

At 1:38 of PO Vaskovich's BWC, PO Greaiqe begins to grab § 87(2)(b). In response, § 87(2)(b) moves back and moves his arms (Board Review 16). Additional officers gather around § 87(2)(b) and it is unclear what occurs once several officers come to assist. However, the group of officers and § 87(2)(b) shift a few feet away and it appears that the officers bring § 87(2)(b) down to the ground. Neither PO Vaskovich's BWC or any of the other officers' BWC capture PO Greaiqe punching § 87(2)(b) and none of the officers' BWC clearly captures the entire arrest of § 87(2)(b).

NYPD Patrol Guide Procedure 221-01 states that force may be used when it is reasonable to ensure the safety of a member of the service or otherwise protect life, or when it is reasonable to place

person in custody or prevent escape from custody (Board Review 52).

§ 87(2)(g)

Allegation (F) Force: On July 4, 2019, at 325 East 143rd Street in the Bronx, officers used physical force against § 87(2)(b)

In his initial CCRB complaint, § 87(2)(b) stated that after officers accused him of resisting arrest and pushed him down to the ground, officers then punched him in the face, kicked him in the back of the head, and handcuffed him (Board Review 02). § 87(2)(b) did not describe any of the officers who used force against him and did not provide a sworn statement to the CCRB (Board Review 47).

§ 87(2)(b) did not witness § 87(2)(b)'s arrest (Board Review 01).

In his CCRB statement, PO Greaige stated that while § 87(2)(b) was on the ground, he tucked his arms under him, flailed his legs and tensed his entire body (Board Review 06). The officers yelled, "Stop resisting," and "Give me your hands," multiple times. PO Greaige stated that § 87(2)(b) possibly lost stamina which allowed the officers to successfully place him in handcuffs. PO Greaige denied punching § 87(2)(b) and did not see an officer do so. PO Greaige did not recall if officers used any additional force.

PO Amarantepolanco did not know what § 87(2)(b) was doing with his hands while he was on the ground, but § 87(2)(b) was not doing anything with his feet (Board Review 07). Eventually the officers placed the handcuff on one of § 87(2)(b)'s hands and PO Amarantepolanco believed that he placed the handcuff on § 87(2)(b)'s other hand by grabbing his hand. PO Amarantepolanco denied punching § 87(2)(b) and did not see an officer do so. PO Amarantepolanco did not do anything else to get § 87(2)(b) in handcuffs and did not see officers do anything else.

In his CCRB statement, PO Moran stated that he saw § 87(2)(b) struggling with officers on the ground, but he could not see what the officers were doing or where they were contacting § 87(2)(b) (Board Review 04). § 87(2)(b) moved his shoulders and feet. PO Moran assisted by grabbing § 87(2)(b)'s feet. PO Moran denied punching § 87(2)(b) and did not see officers do so. PO Moran did not make physical contact with anywhere else on § 87(2)(b)'s body aside from his foot. PO Moran denied punching § 87(2)(b) or using additional force and did not see officers doing so.

PO Hernandez stated that he did not see officers do anything else besides grab § 87(2)(b)'s hands (Board Review 05). PO Hernandez did not make any physical contact with § 87(2)(b).

Sgt. Marquez did not recall if he used any force against civilians or if any officers did so and did not recall if any arrests were made (Board Review 03).

As noted above, none of the officers' BWC clearly captured the entirety of § 87(2)(b)'s arrest. Additionally, none of the officers' BWC captured officers punch or kick § 87(2)(b). At 02:50 of PO Amarantepolanco's BWC, § 87(2)(b) asks, "Why are you choking me? What did I do?" (Board Review 17) However, because the BWC does not clearly depict what is happening at this point and § 87(2)(b) did not provide a statement regarding this, this allegation was not pleaded.

§ 87(2)(g)

Allegation (G) Discourtesy: On July 4, 2019, at 325 East 143rd Street in the Bronx, an officer spoke discourteously to § 87(2)(b)

At 01:03 of PO Moran's BWC, as the officers were trying to handcuff § 87(2)(b) on the ground, an officer yells, "Crying like a little girl, give us your hands (Board Review 25)." § 87(2)(b) replies, "What did I do, man? I gotta go to work tomorrow." An officer then says, "Too fucking bad." It is unclear from the officers' BWC who made these statements.

§ 87(2)(b) did not provide a statement regarding this interaction (Board Review 02).

In their CCRB statements, PO Greaige, PO Moran, PO Amarantepolanco, Sgt. Marquez, and PO Hernandez stated that they did not know who made the above statements (Board Review 03-07).

§ 87(2)(g)

Allegation (H) Abuse of Authority: On July 5, 2019, at the PSA 7 stationhouse, Sergeant Wilmer Marquez did not process § 87(2)(b)'s complaint regarding officers.

It is undisputed that on July 5, 2019, § 87(2)(b) went to the PSA 7 stationhouse and spoke with PO Moran in an attempt to file a complaint against officers regarding an arrest (Board Review 01 and 04). In response, PO Moran went to the desk and spoke with Sgt. Marquez. PO Moran informed Sgt. Marquez that § 87(2)(b) wanted to make a complaint, that she was injured, and that she just came from the hospital. PO Moran stated that Sgt. Marquez instructed him to provide § 87(2)(b) Rodriguez with the CCRB's information. PO Moran denied being told to take § 87(2)(b)'s complaint. PO Moran subsequently wrote down the CCRB's phone number, address, and email and provided them to § 87(2)(b).

In his CCRB statement, Sgt. Marquez stated that while he was at the desk, § 87(2)(b) entered the stationhouse and complained that she was pushed (Board Review 03). Sgt. Marquez did not recall if PO Moran told him that § 87(2)(b) was trying to file a complaint and did not recall speaking with PO Moran regarding § 87(2)(b) wanting to file a complaint. Sgt. Marquez stated that when a civilian wants to file a complaint, he would notify IAB. Sgt. Marquez did not recall if PO Moran notified IAB, if he gave § 87(2)(b) any paperwork, or if PO Moran provided § 87(2)(b) with options on how to file a complaint. Sgt. Marquez did not recall telling PO Moran that they could not process § 87(2)(b)'s complaint at the stationhouse or telling PO Moran to give the CCRB's phone number to § 87(2)(b).

NYPD Patrol Guide Procedure 207-31 outlines the appropriate actions to take when a civilian indicates that they wish to make a complaint against an NYPD officer (Board Review 51). Officers

are to interview the complainant regarding the substance of their complaint and are required to provide the complainant with a copy of PD313-154, the Civilian Complaint Report, to be prepared in the complainant's handwriting.

§ 87(2)(g) [REDACTED]

Civilian and Officer CCRB Histories

- § 87(2)(b) [REDACTED]
- This is the first complaint to which § 87(2)(b) [REDACTED] has been a party (Board Review 54).
 - PO Hernandez has been a member of service for four years and has been a subject in one other CCRB complaint and one allegation, the case is still open. § 87(2)(g) [REDACTED]
 - PO Greaige has been a member of service for four years and has been a subject in one CCRB complaint and one allegation; the case is still open. § 87(2)(g) [REDACTED]
 - Sgt. Marquez has been a member of service for seven years and has been a subject in two CCRB complaints and two allegations, none of which were substantiated. § 87(2)(g) [REDACTED]

Mediation, Civil and Criminal Histories

- This case was unsuitable for mediation.
- A Notice of Claim query was sent on March 5, 2020 (Board Review 48). The results are pending.

§ 87(2)(b) [REDACTED]

§ 87(2)(c) [REDACTED]

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____

CCRB Case # 201905840

Signature

Print Title & Name

Date

Reviewer:

Signature

Print Title & Name

Date